

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LONZO BONNER,

Defendant-Appellant.

UNPUBLISHED
September 2, 1997

No. 195213
Recorder's Court
LC No. 95-006374

Before: Markey, P.J., and Jansen and White, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of three counts of first-degree premeditated murder, MCL 750.316; MSA 28.548, eight counts of assault with intent to murder, MCL 750.83; MSA 28.278, and one count of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to serve concurrent terms of life without parole for each of his first-degree murder convictions and 25 to 49.46 years' imprisonment for each of his assault convictions, to be served consecutively to a two-year term of imprisonment for his felony-firearm conviction. He appeals as of right and we affirm.

This case arises out of a shooting, resulting in three deaths and eight injured persons, that occurred in the City of Detroit on May 7, 1995. After engaging in a fight with two other people at an after-hours night club, defendant and his codefendant¹ were escorted from the club on May 6, 1995. Defendant was heard to say, "It ain't over, I'm a get you," while his codefendant stated, "I'm a get you. It ain't over yet. I'll be back." The following night, defendant and his codefendant put two loaded AK-47s belonging to defendant into the back of defendant's vehicle and drove back to the night club. Defendant and his codefendant removed the guns from the trunk of the car, went to a vacant field across from the club, and began firing at the building. There were numerous shots fired, and three people were killed: Adrienne Arnold, Travares Vaughn, and Angela Jackson. Eight others were shot and wounded.

On appeal, defendant raises four issues. He contends that the trial court erred by admitting other bad acts evidence, that he was denied the effective assistance of counsel, that the trial court erred

in denying his motion to quash the bindover on the charges of first-degree murder, and that his sentences for assault with intent to murder violate the principle of proportionality. We do not find any issue to require reversal.

Defendant first argues that the trial court erred by admitting evidence concerning other wrongful acts. In this case, the prosecutor introduced evidence that defendant had been in possession of a rifle on December 31, 1994. Defense counsel did not object to this testimony. Unpreserved, nonconstitutional plain error “may not be considered by an appellate court for the first time on appeal unless the error could have been decisive of the outcome or unless it falls under the category of cases . . . where prejudice is presumed or reversal is automatic.” *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994).

Any error in introducing this evidence, see MRE 404(b), could not have been decisive of the outcome. The critical issue in this case was defendant’s intent. Defendant claimed self-defense (he claimed that he was shot at first) and he claimed that he was intoxicated at the time of the shooting. Further, defense counsel argued that defendant did not premeditate and deliberate the shootings, thus, he could not be guilty of first-degree murder. Whether defendant had handled a rifle before the shootings was not really relevant to proving either the elements of the case or proving defendant’s proffered defenses. Therefore, we conclude that any error in introducing this evidence could not have been decisive of the outcome because the jury would have focused on evidence tending to prove, or disprove, the intent element.

Accordingly, this issue has been forfeited and defendant is not entitled to a new trial on this basis.

Defendant next argues that he was deprived of his right to the effective assistance of counsel because defense counsel did not advance a diminished capacity defense based on intoxication. To establish a claim of ineffective assistance of counsel, the defendant must show that counsel’s performance fell below an objective standard of reasonableness and that the representation so prejudiced the defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994). Defendant did not move for a new trial or evidentiary hearing on this basis below, therefore, our review is limited to the record. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

At trial, defendant claimed that he was acting in self-defense, and that he was intoxicated at the time of the shootings.² Defendant now argues that defense counsel was deficient in failing to advance a diminished capacity defense based on intoxication as well. However, based on the record before us, we do not find that counsel was ineffective. Counsel clearly presented an intoxication defense through witness testimony and attacked the intent element of first-degree murder. Moreover, in a supplemental instruction, the trial court explicitly told the jury that defendant claimed that he was unable to form the requisite intent for first-degree murder and other lesser offenses due to intoxication, and that the prosecution was required to prove that defendant could, and did, specifically intend to commit the offenses. Since the issue of defendant’s intoxication was squarely presented to the jury, we do not find

that defendant was denied the effective assistance of counsel. See *People v LaVearn*, 448 Mich 207, 213-215; 528 NW2d 721 (1995).

Defendant next argues that the trial court erred in denying his motion to quash the information on the first-degree murder charges. In reviewing a circuit court's decision regarding a motion to quash an information, we must determine whether the district court abused its discretion in binding over the defendant. *People v Honeyman*, 215 Mich App 687, 691; 546 NW2d 719 (1996). A district court must bind over a defendant for trial if the evidence presented at the preliminary examination establishes that a felony has been committed and there is probable cause to believe that the defendant committed the charged offense. MCR 6.110(E).

Here, defendant was charged with three counts of first-degree premeditated murder.

In order to convict a defendant of first-degree murder, the prosecution must prove that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. Premeditation and deliberation require sufficient time to allow the defendant to take a second look. The elements of premeditation and deliberation may be inferred from the circumstances surrounding the killing. Premeditation may be established through evidence of the following factors: (1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant's conduct after the homicide. [*People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995) (citations omitted).]

The evidence adduced at the preliminary examination supported the district court's finding to bind defendant over on three counts of first-degree murder. Defendant's statement to the police established that, in the early morning hours of March 6, 1995, defendant and his codefendant were escorted from The Deuce Eight, an after-hours club in Detroit, for having participated in a fight on the dance floor, and that, at approximately 2:00 a.m. on May 7, 1995, following a discussion in which defendant and codefendant recounted what had happened on May 6, 1995, the two men retrieved two loaded AK-47s from defendant's home, placed the guns in the trunk of defendant's car, and returned to the club. Initially, the two men drove by the club "just to see how many people were there." Defendant observed several parked cars and approximately twelve individuals standing on the porch. According to defendant, the individuals on the porch fired numerous shots at them. Defendant and codefendant then drove to a nearby street, parked defendant's car, removed the guns from defendant's trunk, walked to a field across from The Deuce Eight, and simultaneously began firing at the people on the porch. Three people died as a result of the shooting. The only bullet casings found were discovered in an alley behind the vacant lot. A firearms expert examined the casings and determined that there were only two weapons involved in the shooting and that both weapons were AK-47s. Given the progression of events from May 6 to May 7, 1995, as well as the magnitude of the weaponry and the repeated firings, it is reasonable to infer that defendant intended to kill and that defendant committed the killings with premeditation and deliberation.

Thus, the trial court properly denied defendant's motion to quash the information.

Lastly, defendant argues that the sentences for his assault with intent to murder convictions are disproportionate. However, given our affirmance of defendant's three convictions of first-degree murder and the mandatory sentences of life without parole for those convictions, even if we concluded that the sentences for assault with intent to murder were disproportionate, defendant would be afforded no relief. *People v Passeno*, 195 Mich App 91, 102; 489 NW2d 152 (1992).

Moreover, in considering the nature of the offenses involved, and the reasons stated by the trial court in departing from the guidelines range, we would find no abuse of discretion in the sentences imposed for the assaults. *People v Houston*, 448 Mich 312; 532 NW2d 508 (1995).

Affirmed.

/s/ Jane E. Markey

/s/ Kathleen Jansen

/s/ Helene N. White

¹ The codefendant, Beau Strawder, was tried with defendant before the same jury on three counts of first-degree murder, eight counts of assault with intent to murder, and one count of felony-firearm. Strawder proffered an alibi defense, i.e., that he was not at the shooting. Although there was evidence that both defendant and Strawder shot at the club, Strawder was acquitted on all counts.

² There was additional testimony from defendant's brother which would have indicated an alibi defense, i.e., that defendant was not at the shootings. However, this "defense" was not advanced by counsel at closing argument.